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06                   UNITED STATES DISTRICT COURT  
07                   WESTERN DISTRICT OF WASHINGTON  
08                   AT SEATTLE

09  
10                   RICKY PATU,

11                   Plaintiff,

12                   v.

13                   SHERYL ALLBERT, *et al.*,

14                   Defendants.

15                   Case No. C14-0765-MJP-MAT

16                   REPORT AND RECOMMENDATION

17                   This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff Ricky Patu, a  
18 state prisoner, is proceeding with this action *pro se* and *in forma pauperis*. Plaintiff submitted  
19 his original complaint to the Court for filing in May 2014. (*See* Dkt. 1.) He alleged therein  
20 that he had suffered adverse health consequences over a period of years related to the quality of  
21 the food served at the Monroe Correctional Complex – Special Offender Unit (“MCC-SOU”).  
22 (*See* Dkt. 4.) Plaintiff identifies the following individuals as defendants in his complaint:  
Sheryl Allbert, ARNP at MCC; Margaret Gilbert, Superintendent of the MCC-SOU; and,  
Vilma Khounphixau. (*Id.*) Plaintiff requested monetary damages for “grief and suffering.”  
(*Id.*)

01       After reviewing plaintiff's complaint, this Court concluded that plaintiff had not  
02 adequately alleged therein any cause of action under § 1983. Thus, on June 6, 2014, this Court  
03 issued an Order declining to serve plaintiff's complaint and granting him leave to file an  
04 amended complaint correcting certain specified deficiencies. (Dkt. 7.) The Court identified  
05 in its Order the standard that plaintiff would have to meet in order to proceed with this action.  
06 (*Id.*) Specifically, the Court advised that in order to sustain a civil rights action, a plaintiff  
07 must show (1) that he suffered a violation of rights protected by the Constitution or created by  
08 federal statute, and (2) that the violation was proximately caused by a person acting under color  
09 of state or federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The  
10 Court further advised that in order to satisfy the second prong, a plaintiff must allege facts  
11 showing how individually named defendants caused, or personally participated in causing, the  
12 harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

13       The Court noted, with respect to plaintiff's allegations, that plaintiff failed to identify in  
14 his complaint the federal constitutional right he believed was violated by the conduct of the  
15 named defendants. (Dkt. 7 at 2.) The Court further noted that plaintiff failed to allege  
16 specific facts demonstrating that any of the individuals identified as defendants in his complaint  
17 *personally* participated in causing him harm of federal constitutional dimension. (*Id.*)  
18 Plaintiff was advised that his allegations were simply too vague and conclusory to permit him to  
19 proceed. (*Id.*)

20       Plaintiff was granted thirty days within which to file an amended complaint curing the  
21 deficiencies identified by the Court, and he was advised that his failure to timely file an  
22 amended complaint, or to correct the identified deficiencies, would result in a recommendation

01 that this action be dismissed under 28 U.S.C. § 1915(e)(2)(B). (Dkt. 7 at 2-3.) Plaintiff filed a  
02 timely amended complaint on July 3, 2014. (Dkt. 8.) However, a review of the amended  
03 pleading reveals that plaintiff has not adequately corrected the deficiencies identified in the  
04 Court's prior Order.

05 Plaintiff alleges in his amended complaint that his rights under the Eighth Amendment  
06 have been violated and that he needs help for severe constipation which he has been  
07 experiencing for eight years. (*Id.* at 2.) Plaintiff indicates that he doesn't understand how to  
08 state a claim, but that the relevant facts are contained within documents attached to his amended  
09 pleading. (*Id.*) The documents referenced by plaintiff include: (i) health services kites in  
10 which plaintiff asked to be put back on Metamucil; (ii) health services kites in which plaintiff  
11 complained that his prescribed psyllium packet wasn't given to him during the med-line; (iii) a  
12 list of prescriptions for laxatives provided to plaintiff by MCC-SOU medical staff between  
13 January 1, 2012 and April 9, 2014; (iv) grievance forms in which plaintiff complained about a  
14 piece of hair found in his salad dressing that caused him to become ill, and about soup which  
15 tasted bad and which plaintiff suspected may have been contaminated with poison; and, (v) a  
16 diagnostic imaging report dated September 21, 2007 showing a negative result on a CT scan of  
17 plaintiff's abdomen. (*See id.* at 5-18.)

18 Even when plaintiff's amended complaint is read together with the attached documents,  
19 the pleading as a whole remains deficient because plaintiff fails to make clear how each of the  
20 individuals named as a defendant in the amended complaint participated in the alleged violation  
21 of his Eighth Amendment rights. Plaintiff's allegations remain vague and conclusory and  
22 therefore insufficient to state a cause of action under 42 U.S.C. § 1983.

When a complaint is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief, the Court may dismiss an *in forma pauperis* complaint before service of process under 28 U.S.C. § 1915(e)(2)(B). Because plaintiff has not alleged in his amended civil rights complaint sufficient facts to sustain a cause of action under § 1983, this Court recommends that plaintiff's amended complaint, and this action, be dismissed without prejudice pursuant to § 1915(e)(2)(B). A proposed order accompanies this Report and Recommendation.

DATED this 28th day of July, 2014.

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Mary Alice Theiler  
Chief United States Magistrate Judge